

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10	LORENZO BENTON,)	No. C 08-0295 MMC (PR)
11	Petitioner,)	ORDER DENYING REQUESTS FOR
12	v.)	CERTIFICATE OF
13	ROBERT E. HOREL, Warden,)	APPEALABILITY AND TO
14	Respondents.)	PROCEED IN FORMA PAUPERIS
15)	ON APPEAL
			(Docket Nos. 8 & 9)

On January 16, 2008, petitioner, a California prisoner incarcerated at Pelican Bay State Prison (“PBSP”) and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his indeterminate placement in the PBSP Security Housing Unit (“SHU”) based on his revalidation as a gang member. On September 26, 2008, the Court determined petitioner’s claims were not properly brought in habeas corpus and, instead, must be brought by way of a complaint under 42 U.S.C. § 1983. Consequently, the Court ordered petitioner to file, within thirty days, a § 1983 complaint, and informed petitioner that if he failed to do so the instant action would be dismissed without prejudice. Thereafter, petitioner, rather than filing a § 1983 complaint, filed a motion for reconsideration, in which he argued the Court had erred in its prior ruling. By order filed January 6, 2009, the Court denied the motion for reconsideration and dismissed the action without prejudice to petitioner’s filing a civil rights action in the United States District Court for the Central District of California. (Order, filed Jan. 6, 2009, at 3:16-4:11.)

Petitioner has now filed a notice of appeal from the Court’s order of dismissal and a

1 request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of
2 Appellate Procedure 22(b). Petitioner has also filed a request to proceed in forma pauperis
3 on appeal. Petitioner has not shown, however, “that jurists of reason would find it debatable
4 whether the petition states a valid claim of the denial of a constitutional right and that jurists
5 of reason would find it debatable whether the district court was correct in its procedural
6 ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, the requests for a
7 certificate of appealability and to proceed in forma pauperis on appeal are hereby DENIED.
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10 The Clerk shall forward this order, along with the case file, to the United States Court
11 of Appeals for the Ninth Circuit, from which petitioner may also seek a certificate of
12 appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

13 This order terminates Docket Nos. 8 and 9.

14 IT IS SO ORDERED.

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16 DATED: April 10, 2009
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MAXINE M. CHESNEY
United States District Judge